

HEALTH AND SAFETY CODE

TITLE 7. MENTAL HEALTH AND INTELLECTUAL DISABILITY

SUBTITLE B. STATE FACILITIES

CHAPTER 555. STATE SUPPORTED LIVING CENTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 555.001. DEFINITIONS. In this chapter:

(1) "Alleged offender resident" means a person with an intellectual disability who:

(A) was committed to or transferred to a state supported living center under Chapter 46B or 46C, Code of Criminal Procedure, as a result of being charged with or convicted of a criminal offense; or

(B) is a child committed to or transferred to a state supported living center under Chapter 55, Family Code, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(2) "Center" means the state supported living centers and the ICF-IID component of the Rio Grande State Center.

(3) "Center employee" means an employee of a state supported living center or the ICF-IID component of the Rio Grande State Center.

(4) "Client" means a person with an intellectual disability who receives ICF-IID services from a state supported living center or the ICF-IID component of the Rio Grande State Center.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(107), eff. April 2, 2015.

(6) "Complaint" means information received by the office of independent ombudsman regarding a possible violation of a right of a resident or client and includes information received regarding a failure by a state supported living center or the ICF-IID component of the Rio Grande State Center to comply with the department's policies and procedures relating to the community living options information process.

(7) "Department" means the Department of Aging and

Disability Services.

(8) "Direct care employee" means a center employee who provides direct delivery of services to a resident or client.

(9) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(107), eff. April 2, 2015.

(10) "High-risk alleged offender resident" means an alleged offender resident who has been determined under Section 555.003 to be at risk of inflicting substantial physical harm to another.

(10-a) "ICF-IID" has the meaning assigned by Section 531.002.

(11) "Independent ombudsman" means the individual who has been appointed to the office of independent ombudsman for state supported living centers.

(12) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(13) "Interdisciplinary team" has the meaning assigned by Section 591.003.

(14) "Office" means the office of independent ombudsman for state supported living centers established under Subchapter C.

(15) "Resident" means a person with an intellectual disability who resides in a state supported living center or the ICF-IID component of the Rio Grande State Center.

(16) "State supported living center" has the meaning assigned by Section 531.002.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1346, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(107), eff. April 2, 2015.

Sec. 555.002. FORENSIC STATE SUPPORTED LIVING CENTERS.

(a) The department shall designate separate forensic state supported living centers for the care of high-risk alleged offender

residents. The department shall designate the Mexia and San Angelo State Supported Living Centers for this purpose.

(b) In establishing the forensic state supported living centers, the department shall:

(1) transfer an alleged offender resident already residing in a center who is classified as a high-risk alleged offender resident in accordance with Section 555.003, to a forensic state supported living center;

(2) place high-risk alleged offender residents in appropriate homes at a forensic state supported living center based on whether an individual is:

(A) an adult or a person younger than 18 years of age; or

(B) male or female;

(3) place alleged offender residents who are charged with or convicted of a felony offense or who are alleged by petition or have been found to have engaged in delinquent conduct defined as a felony offense, at the time the residents are initially committed to or transferred to a center, in a forensic state supported living center until a determination under Section 555.003 has been completed;

(4) transfer all residents who request a transfer, other than high-risk alleged offender residents and alleged offender residents described by Subdivision (3) and for whom a determination has not been completed under Section 555.003, from a forensic state supported living center; and

(5) provide training regarding the service delivery system for high-risk alleged offender residents to direct care employees of a forensic state supported living center.

(c) An alleged offender resident committed to a forensic state supported living center, for whom a determination under Section 555.003 has been completed and who is not classified as a high-risk alleged offender resident, may request a transfer to another center in accordance with Subchapter B, Chapter 594.

(d) The department shall ensure that each forensic state supported living center:

(1) complies with the requirements for ICF-IID

certification under the Medicaid program, as appropriate; and

(2) has a sufficient number of center employees, including direct care employees, to protect the safety of center employees, residents, and the community.

(e) The department shall collect data regarding the commitment of alleged offender residents to state supported living centers, including any offense with which an alleged offender resident is charged, the location of the committing court, whether the alleged offender resident has previously been in the custody of the Texas Juvenile Justice Department or the Department of Family and Protective Services, and whether the alleged offender resident receives mental health services or previously received any services under a Section 1915(c) waiver program. The department shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary subject matter jurisdiction over state supported living centers a report of the information collected under this section. The report may not contain personally identifiable information for any person in the report.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1347, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 207 (S.B. 1300), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 207 (S.B. 1300), Sec. 2, eff. September 1, 2017.

Sec. 555.003. DETERMINATION OF HIGH-RISK ALLEGED OFFENDER STATUS. (a) Not later than the 30th day after the date an alleged offender resident is first committed to a state supported living center and, if the resident is classified as a high-risk alleged offender resident, annually on the anniversary of that date, an interdisciplinary team shall determine whether the alleged offender resident is at risk of inflicting substantial physical

harm to another and should be classified or remain classified as a high-risk alleged offender resident.

(b) In making a determination under Subsection (a), the interdisciplinary team shall document and collect evidence regarding the reason the alleged offender resident is determined to be at risk of inflicting substantial physical harm to another.

(c) The interdisciplinary team shall provide the team's findings regarding whether the alleged offender resident is at risk of inflicting substantial physical harm to another and the documentation and evidence collected under this section to:

- (1) the department;
- (2) the director of the state supported living center;
- (3) the independent ombudsman;
- (4) the alleged offender resident or the alleged offender resident's parent if the resident is a minor; and
- (5) the alleged offender resident's legally authorized representative.

(d) An alleged offender resident who is determined to be at risk of inflicting substantial physical harm to another and is classified as a high-risk alleged offender resident is entitled to an administrative hearing with the department to contest that determination and classification.

(e) An individual who has exhausted the administrative remedies provided by Subsection (d) may bring a suit to appeal the determination and classification in district court in Travis County. The suit must be filed not later than the 30th day after the date the final order in the administrative hearing is provided to the individual. An appeal under this section is by trial de novo.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. [643](#)), Sec. 22, eff. June 11, 2009.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR EMPLOYEES, CONTRACTORS, AND VOLUNTEERS. (a) The department, the Department of State Health Services, and the Health and Human

Services Commission shall perform a state and federal criminal history background check on a person:

(1) who is:

- (A) an applicant for employment with the agency;
 - (B) an employee of the agency;
 - (C) a volunteer with the agency;
 - (D) an applicant for a volunteer position with the agency;
 - (E) an applicant for a contract with the agency;
- or
- (F) a contractor of the agency; and

(2) who would be placed in direct contact with a resident or client.

(b) The department, the Department of State Health Services, and the Health and Human Services Commission shall require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check.

(c) Each agency shall obtain electronic updates from the Department of Public Safety of arrests and convictions of a person:

(1) for whom the agency performs a background check under Subsection (a); and

(2) who remains an employee, contractor, or volunteer of the agency and continues to have direct contact with a resident or client.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. [643](#)), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1027 (H.B. [2673](#)), Sec. 10, eff. June 14, 2013.

Sec. 555.022. DRUG TESTING; POLICY. (a) The executive commissioner shall adopt a policy regarding random testing and reasonable suspicion testing for the illegal use of drugs by a center employee.

(b) The policy adopted under Subsection (a) must provide

that a center employee may be terminated solely on the basis of a single positive test for illegal use of a controlled substance. The policy must establish an appeals process for a center employee who tests positively for illegal use of a controlled substance.

(c) The director of a state supported living center or the superintendent of the Rio Grande State Center shall enforce the policy adopted under Subsection (a) by performing necessary drug testing of the center employees for the use of a controlled substance as defined by Section 481.002.

(d) Testing under this section may be performed on a random basis or on reasonable suspicion of the use of a controlled substance.

(e) For purposes of this section, a report made under Section 555.023 is considered reasonable suspicion of the use of a controlled substance.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The executive commissioner shall adopt a policy requiring a center employee who knows or reasonably suspects that another center employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the director of the state supported living center or the superintendent of the Rio Grande State Center, as appropriate.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.024. CENTER EMPLOYEE TRAINING. (a) Before a center employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a center employee. The department shall ensure the basic center employee competency course focuses on:

(1) the uniqueness of the individuals the center

employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with an intellectual disability; and

(3) the conduct expected of center employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding the following topics:

(1) the general operation and layout of the center at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals with an intellectual disability who receive services from the department;

(6) respecting personal choices made by residents and clients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with an intellectual disability;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of center employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall

provide a direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each resident or client for whom the direct care employee will provide direct care, including the following topics:

- (1) prevention and management of aggressive or violent behavior;
- (2) observing and reporting changes in behavior, appearance, or health of residents and clients;
- (3) positive behavior support;
- (4) emergency response;
- (5) person-directed plans;
- (6) self-determination;
- (7) seizure safety;
- (8) techniques for:
 - (A) lifting;
 - (B) positioning; and
 - (C) movement and mobility;
- (9) working with aging residents and clients;
- (10) assisting residents and clients:
 - (A) who have a visual impairment;
 - (B) who have a hearing deficit; or
 - (C) who require the use of adaptive devices and specialized equipment;
- (11) communicating with residents and clients who use augmentative and alternative devices for communication;
- (12) assisting residents and clients with personal hygiene;
- (13) recognizing appropriate food textures;
- (14) using proper feeding techniques to assist residents and clients with meals;
- (15) physical and nutritional management plans; and
- (16) home and community-based services, including the principles of community inclusion and participation and the community living options information process.

(d) The executive commissioner shall adopt rules that require a center to provide refresher training courses to direct

care employees on a regular basis.

(e) A center may allow an employee of an ICF-IID licensed by the department, an employee of a person licensed or certified to provide Section 1915(c) waiver program services, or another employee or professional involved in the provision of services to persons with an intellectual disability to receive information and training under this section, as appropriate. The center may charge an administrative fee in an amount not to exceed the cost of providing the information or training.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1348, eff. April 2, 2015.

Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section, "private space" means a place in a center in which a resident or client has a reasonable expectation of privacy, including:

- (1) a bedroom;
- (2) a bathroom;
- (3) a place in which a resident or client receives medical or nursing services;
- (4) a place in which a resident or client meets privately with visitors; or
- (5) a place in which a resident or client privately makes phone calls.

(b) The department shall install and operate video surveillance equipment in a center for the purpose of detecting and preventing the exploitation or abuse of residents and clients.

(c) Except as provided by Subchapter E, the department may not install or operate video surveillance equipment in a private space or in a location in which video surveillance equipment can capture images within a private space.

(d) The department shall ensure that the use of video surveillance equipment under this section complies with federal requirements for ICF-IID certification.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22,

eff. June 11, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 1, eff. May 25, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1349, eff. April 2, 2015.

Sec. 555.026. DRINKING WATER QUALITY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY GUIDANCE ON LEAD AND COPPER TESTING. To ensure the quality of water provided by public drinking water supply systems to state supported living centers, the department or its successor agency, with guidance from the Texas Commission on Environmental Quality, shall:

(1) develop:

(A) a testing plan and monitoring strategy;

(B) outreach and educational materials for distribution to residents and department staff;

(C) requirements for using an accredited laboratory and sample chain of custody procedures; and

(D) guidance for compliance with the federal lead and copper rules (40 C.F.R. Part 141, Subpart I);

(2) review:

(A) public notification procedures to staff, residents, and visitors regarding water quality;

(B) sampling protocols and procedures;

(C) locations of taps used for monitoring;

(D) analytical data on lead or copper levels exceeding the applicable action level;

(E) remediation activities; and

(F) customer service inspection reports;

(3) compile a list of qualified customer service inspectors; and

(4) perform:

(A) on-site training and evaluation of sampling; and

(B) on-site evaluation of customer service inspections through licensed customer service inspectors.

Added by Acts 2017, 85th Leg., R.S., Ch. 559 (S.B. 546), Sec. 1, eff. June 9, 2017.

Sec. 555.027. ANATOMICAL GIFT. (a) The executive commissioner by rule shall prescribe a form that a resident's guardian may sign on behalf of a resident if the resident's guardian elects to make an anatomical gift on behalf of the resident in accordance with Chapter 692A.

(b) Subsection (a) does not preclude a guardian from executing a document in accordance with Chapter 692A that supersedes the form executed under that subsection.

Added by Acts 2019, 86th Leg., R.S., Ch. 843 (H.B. 2734), Sec. 1, eff. September 1, 2019.

SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE SUPPORTED LIVING CENTERS

Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of independent ombudsman is established for the purpose of investigating, evaluating, and securing the rights of residents and clients of state supported living centers and the ICF-IID component of the Rio Grande State Center. The office is administratively attached to the department. The department shall provide administrative support and resources to the office as necessary for the office to perform its duties.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1350, eff. April 2, 2015.

Sec. 555.052. INDEPENDENCE. The independent ombudsman in the performance of the ombudsman's duties and powers under this subchapter acts independently of the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN.

(a) The governor shall appoint the independent ombudsman for a term of two years expiring February 1 of odd-numbered years.

(b) The governor may appoint as independent ombudsman only an individual with at least five years of experience managing and ensuring the quality of care and services provided to individuals with an intellectual disability.

(c) A person appointed as independent ombudsman may be reappointed.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 573 (S.B. 747), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1351, eff. April 2, 2015.

Sec. 555.054. ASSISTANT OMBUDSMEN. (a) The independent ombudsman shall:

(1) hire assistant ombudsmen to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman; and

(2) station an assistant ombudsman at each center.

(b) The independent ombudsman may hire as assistant ombudsmen only individuals with at least five years of experience ensuring the quality of care and services provided to individuals with an intellectual disability.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1352, eff. April 2, 2015.

Sec. 555.055. CONFLICT OF INTEREST. A person may not serve as independent ombudsman or as an assistant ombudsman if the person or the person's spouse:

(1) is employed by or participates in the management

of a business entity or other organization receiving funds from the department;

(2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the department; or

(3) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities or compensation on behalf of a profession related to the operation of the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.056. REPORT. (a) The independent ombudsman shall submit on a biannual basis to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over state supported living centers a report that is both aggregated and disaggregated by individual center and describes:

(1) the work of the independent ombudsman;

(2) the results of any review or investigation undertaken by the independent ombudsman, including a review or investigation of services contracted by the department;

(3) any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman; and

(4) any recommendations that the independent ombudsman has for systemic improvements needed to decrease incidents of abuse, neglect, or exploitation at an individual center or at all centers.

(b) The independent ombudsman shall ensure that information submitted in a report under Subsection (a) does not permit the identification of an individual.

(c) The independent ombudsman shall immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction

over the Department of Aging and Disability Services any particularly serious or flagrant:

(1) case of abuse or injury of a resident or client about which the independent ombudsman is made aware;

(2) problem concerning the administration of a center program or operation; or

(3) interference by a center, the department, or the commission, other than actions by the commission's office of inspector general in accordance with the office's duties, with an investigation conducted by the independent ombudsman.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The department shall allow any resident or client, authorized representative of a resident or client, family member of a resident or client, or other interested party to communicate with the independent ombudsman or an assistant ombudsman. The communication:

(1) may be in person, by mail, or by any other means; and

(2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1) share with the Department of Family and Protective Services a communication that may involve the abuse, neglect, or exploitation of a resident or client;

(2) share with the inspector general a communication that may involve an alleged criminal offense;

(3) share with the regulatory services division of the department a communication that may involve a violation of an ICF-IID standard or condition of participation; and

(4) disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation by the independent ombudsman public after the investigation is complete but only if the name and any other

personally identifiable information of a resident or client, legally authorized representative of a resident or client, family member of a resident or client, center, center employee, or other individual are redacted from the report and remain confidential. The independent ombudsman may provide an unredacted report to the center involved in the investigation, the department, the Department of Family and Protective Services, and the inspector general.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except as provided by this section. Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1353, eff. April 2, 2015.

Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. The independent ombudsman shall promote awareness among the public, residents, clients, and center employees of:

- (1) how the office may be contacted;
- (2) the purpose of the office; and
- (3) the services the office provides.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.059. DUTIES AND POWERS. (a) The independent ombudsman shall:

- (1) evaluate the process by which a center investigates, reviews, and reports an injury to a resident or client or an unusual incident;

- (2) evaluate the delivery of services to residents and clients to ensure that the rights of residents and clients are fully

observed, including ensuring that each center conducts sufficient unannounced patrols;

(3) immediately refer a complaint alleging the abuse, neglect, or exploitation of a resident or client to the Department of Family and Protective Services;

(4) refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation or a possible violation of an ICF-IID standard or condition of participation to the regulatory services division of the department;

(5) refer a complaint alleging a criminal offense, other than an allegation of abuse, neglect, or exploitation of a resident or client, to the inspector general;

(6) conduct investigations of complaints, other than complaints alleging criminal offenses or the abuse, neglect, or exploitation of a resident or client, if the office determines that:

(A) a resident or client or the resident's or client's family may be in need of assistance from the office; or

(B) a complaint raises the possibility of a systemic issue in the center's provision of services;

(7) conduct biennial on-site audits at each center of:

(A) the ratio of direct care employees to residents;

(B) the provision and adequacy of training to:

(i) center employees; and

(ii) direct care employees; and

(C) if the center serves alleged offender residents, the provision of specialized training to direct care employees;

(8) conduct an annual audit of each center's policies, practices, and procedures to ensure that each resident and client is encouraged to exercise the resident's or client's rights, including:

(A) the right to file a complaint; and

(B) the right to due process;

(9) prepare and deliver an annual report regarding the findings of each audit to the:

(A) executive commissioner;
(B) commissioner;
(C) Aging and Disability Services Council;
(D) governor;
(E) lieutenant governor;
(F) speaker of the house of representatives;
(G) standing committees of the senate and house of representatives with primary jurisdiction over state supported living centers; and

(H) state auditor;

(10) require a center to provide access to all records, data, and other information under the control of the center that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

(11) review all final reports produced by the Department of Family and Protective Services, the regulatory services division of the department, and the inspector general regarding a complaint referred by the independent ombudsman;

(12) provide assistance to a resident, client, authorized representative of a resident or client, or family member of a resident or client who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the resident or client;

(13) make appropriate referrals under any of the duties and powers listed in this subsection; and

(14) monitor and evaluate the department's actions relating to any problem identified or recommendation included in a report received from the Department of Family and Protective Services relating to an investigation of alleged abuse, neglect, or exploitation of a resident or client.

(b) The independent ombudsman may apprise a person who is interested in a resident's or client's welfare of the rights of the resident or client.

(c) To assess whether a resident's or client's rights have been violated, the independent ombudsman may, in any matter that does not involve an alleged criminal offense or the abuse, neglect,

or exploitation of a resident or client, contact or consult with an administrator, employee, resident, client, family member of a resident or client, expert, or other individual in the course of the investigation or to secure information.

(d) Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate an alleged criminal offense or the alleged abuse, neglect, or exploitation of a resident or client.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1354, eff. April 2, 2015.

Sec. 555.060. RETALIATION PROHIBITED. The department or a center may not retaliate against a department employee, center employee, or any other person who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.061. TOLL-FREE NUMBER. (a) The office shall establish a permanent, toll-free number for the purpose of receiving any information concerning the violation of a right of a resident or client.

(b) The office shall ensure that:

(1) the toll-free number is prominently displayed in the main administration area and other appropriate common areas of a center; and

(2) a resident, a client, the legally authorized representative of a resident or client, and a center employee have confidential access to a telephone for the purpose of calling the toll-free number.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

SUBCHAPTER D. INSPECTOR GENERAL DUTIES

Sec. 555.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a resident or client of a center. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.102. SUMMARY REPORT. (a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

(1) a summary of the activities performed during an investigation for which the inspector general provided assistance;

(2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and

(3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

(1) executive commissioner;

(2) governor;

(3) lieutenant governor;

(4) speaker of the house of representatives;

(5) standing committees of the senate and house of representatives with primary jurisdiction over centers;

(6) state auditor;

(7) independent ombudsman and the assistant ombudsman

for the center involved in the report; and

(8) alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the office of the attorney general, the state auditor's office, and law enforcement agencies.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.33, eff. September 1, 2019.

Sec. 555.103. ANNUAL STATUS REPORT. (a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual center regarding:

(1) the number and type of investigations conducted with the assistance of the inspector general;

(2) the number and type of investigations involving a center employee;

(3) the relationship of an alleged victim to an alleged perpetrator, if any;

(4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which

commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

- (1) executive commissioner;
- (2) governor;
- (3) lieutenant governor;
- (4) speaker of the house of representatives;
- (5) standing committees of the senate and house of representatives with primary jurisdiction over centers;
- (6) state auditor; and
- (7) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.34, eff. September 1, 2019.

Sec. 555.104. RETALIATION PROHIBITED. The department or a center may not retaliate against a department employee, a center employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

SUBCHAPTER E. ELECTRONIC MONITORING OF RESIDENT'S ROOM

Sec. 555.151. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in a resident's room and making tapes or recordings with the device after making a request to the center to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in a resident's room; and

(ii) audio devices installed in a resident's room designed to acquire communications or other sounds occurring in the room; and

(B) does not include an interception device that is specifically used for the nonconsensual interception of wire or electronic communications.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.14, eff. January 1, 2019.

Sec. 555.152. CRIMINAL AND CIVIL LIABILITY. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in a resident's room.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in a resident's room or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this subchapter; or

(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this subchapter; or

(B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

(1) an oral communication as defined by Article [18A.001](#), Code of Criminal Procedure; or

(2) a communication as defined by Section [123.001](#), Civil Practice and Remedies Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. [33](#)), Sec. 2, eff. May 25, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. [2931](#)), Sec. 3.15, eff. January 1, 2019.

Sec. 555.153. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR CENTER. (a) For purposes of this subchapter, the placement and use of an electronic monitoring device in a resident's room are considered to be covert if:

(1) the placement and use of the device are not open and obvious; and

(2) the center and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the center may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in a resident's room.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. [33](#)), Sec. 2, eff. May 25, 2013.

Sec. 555.154. REQUIRED FORM ON ADMISSION. The executive commissioner by rule shall prescribe a form that must be completed and signed on a resident's admission to a center by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in a resident's room or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in a resident's room or who consents to or acquiesces in the covert placement of the device in a resident's room has waived any privacy right the person may have had in

connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under this subchapter, and that if the center refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring the person should contact the department;

(4) the basic procedures that must be followed to request authorized electronic monitoring;

(5) the manner in which this subchapter affects the legal requirement to report abuse, neglect, or exploitation when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the executive commissioner considers advisable to include on the form.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.155. AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST. (a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The executive commissioner by rule shall prescribe:

(1) guidelines that will assist centers, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident's legal

representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the executive commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.156. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the center on a form prescribed by the executive commissioner.

(b) The form prescribed by the executive commissioner must require the resident or the resident's guardian or legal representative to:

(1) release the center from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the executive commissioner, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 555.155(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the

required capacity.

(d) The form prescribed by the executive commissioner under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the center from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in a resident's room and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The executive commissioner may include other information that the executive commissioner considers to be appropriate on either of the forms that the executive commissioner is required to prescribe under this section.

(h) The executive commissioner by rule may prescribe the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the center; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.157. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS. (a) A center shall permit a resident or the resident's guardian or legal representative to monitor the

resident's room through the use of electronic monitoring devices.

(b) The center shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) A center may not refuse to admit an individual to residency in the center and may not remove a resident from the center because of a request to conduct authorized electronic monitoring. A center may not remove a resident from the center because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) A center shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment; and

(2) maintaining the equipment.

(g) A center may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The executive commissioner by rule may adopt guidelines regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the

center may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) A center may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.158. REPORTING ABUSE, NEGLECT, OR EXPLOITATION.

(a) A person who is conducting authorized electronic monitoring under this subchapter and who has cause to believe, based on the viewing of or listening to a tape or recording, that a resident is in a state of abuse, neglect, or exploitation or has been abused, neglected, or exploited shall:

(1) report that information to the Department of Family and Protective Services as required by Section 48.051, Human Resources Code; and

(2) provide the original tape or recording to the Department of Family and Protective Services.

(b) If the Department of Family and Protective Services has cause to believe that a resident has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense, the department shall immediately notify law enforcement and the inspector general as provided by Section 48.1522, Human Resources Code, and provide a copy of the tape or recording to law enforcement or the inspector general on request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.159. USE OF TAPE OR RECORDING BY AGENCY OR COURT.

(a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or

authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or exploitation or evidence of neglect may be found. The executive commissioner by rule may encourage persons who send a tape or recording to the department to identify the place on the tape or recording where an incident of abuse or evidence of neglect may be found.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.160. NOTICE AT ENTRANCE TO CENTER. Each center shall post a notice at the entrance to the center stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The executive commissioner by rule shall prescribe the format and the precise content of the notice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.161. ENFORCEMENT. The department may impose appropriate sanctions under this chapter on a director of a center who knowingly:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the center because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the center because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.162. INTERFERENCE WITH DEVICE; CRIMINAL PENALTY.

(a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this subsection is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.